DOCUMENT RESUME

ED 105 547 95 EA 006 861

TITLE	Student Rights and the Courts. The Best of ERIC, Number 9.
INSTITUTION	Oregon Univ., Eugene. ERIC Clearinghouse on Educational Management.
SPONS AGENCY	National Inst. of Education (DHEW), Washington, D.C.
PUB DATE	May 75
CONTRACT	OEC-0-8-080353-3514
NOTE	5p.
AVAILABLE FROM	ERIC/CEM, University of Oregon, Eugene, Oregon 97403 (Free)
EDRS PRICE	MF-$0.76 HC-$1.58 PLUS POSTAGE
DESCRIPTORS	Board of Education Policy; Boards of Education; Civil Liberties; Corporal Punishment; *Court Litigation; Discipline; *Discipline Policy; *Due Process; Elementary Secondary Education; Expulsion; Guidelines; Handicapped Students; Principals; School Community Relationship; *School Law; *Student Rights; Student School Relationship; Supreme Court Litigation; Suspension

ABSTRACT

This annotated bibliography includes some of the most recent material on the legal aspects of student rights, especially the constitutional issues that remain unresolved. Many of the articles summarized deal with the relationship between the schools and the courts--a relationship that is constantly being redefined with new court decisions affecting school policy. Fourteen documents and journal articles indexed in Resources in Education and the Current Index to Journals in Education are annotated. (Author)

ED105547

The Best ERIC
Clearinghouse on Educational Management

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
NATIONAL INSTITUTE OF EDUCATION
THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL NATIONAL INSTITUTE OF EDUCATION POSITION OR POLICY

Number 9 May 1975

The Best of ERIC presents annotations of ERIC literature on important topics in educational management.

The selections are intended to give the practicing educator easy access to the most significant and useful information available from ERIC. Because of space limitations, the items listed should be viewed as representative, rather than exhaustive, of literature meeting those criteria.

Materials were selected for inclusion from the ERIC catalogs *Resources in Education (RIE)* and *Current Index to Journals in Education (CIJE)*.

This bibliography was prepared by the ERIC Clearinghouse on Educational Management for distribution by the Association of California School Administrators.

Student Rights and the Courts

Commission on Administrative Behaviors Supportive of Human Rights (Phi Delta Kappa). "A Sample Student Code." *Phi Delta Kappan*, 56, 4 (December 1974), pp. 236-242. See also p. 235.

Phi Delta Kappa's sample code is intended to assert student rights rather than restrict them. It states those rights in positive terms, leaving the "shall nots" to the school administration. The exercise of authority by school officials over students is restricted according to the basic constitutional principles that the code embodies.

The code covers every major area of student rights that the courts have focused on, especially in recent years. It deals with student records, searches, possession and distribution of literature, expression and assembly, freedom of religion, equal educational opportunity, and suspension and expulsion. Indeed, these last two areas the commission found to be "the heart of any student disciplinary Code." Therefore, it was careful to incorporate due-process procedures into the sections dealing with suspension and expulsion. The first section of the code provides that the code and "any additional rules governing student discipline" be distributed to both students and parents.

When the magazine sent copies of the code to a sample of educators across the country, the reactions it received were strong and diverse, ranging from definite approval of the code's "liberal" slant to extreme disapproval of its supposed restriction of school officials in dealing with discipline cases.

Goldstein, Stephen R. *Law and Public Education: Cases and Materials. Contemporary Legal Education Series.* 1974. 944 pages. ED number not yet assigned.

Goldstein's compendium of cases and accompanying analyses is the most complete volume available on the courts and public schools. Although he covers all major areas of the relationship between these two institutions (including a survey of the history of law and education in the United States), chapters 5 through 8 deal specifically with student rights, including school control of "general student conduct and status," control of expression, "sanctions for breaches of rules" (including corporal punishment, suspension, and expulsion), and enforcement of student conduct and status rules (including search and seizure).

Goldstein quotes extensively from the actual court decisions he analyzes, enabling the reader to get a thorough, immediate sense of the issues as the courts view them. His analyses are free from the biases (either pro or con) that plague so much of the literature on this controversial topic. The timeliness and comprehensiveness of this volume make it a valuable resource.

Order copies from Bobbs-Merrill Company, Inc., Law Division, 4300 West 62nd Street, Indianapolis, Indiana 46206. $18.50. MF not available from EDRS.

Hazard, William R. "Courts in the Saddle: School Boards Out." *Phi Delta Kappan*, 56, 4 (December 1974), pp. 259-261.

Although Hazard's article deals with all educational policy areas, his analysis of the relationship between the local school board and other governmental units (especially the courts) includes the areas of student rights and discipline. He points out that "court-made policy" is becoming increasingly important in the governance of the schools.

Noting that even though the courts are but one of the state and federal agencies that exercise control over local board decisions, Hazard states that court rulings and policy are "powerful determinants" of board actions in areas such as "pupil rights." He concludes that since "policy-making determinants *are already vested* in agencies outside the board," the concept of local control of the schools is in reality a "myth."

This article is valuable because of its author's attempt to delineate the consequences of increasing judicial policy-making (perhaps most evident in the area of student rights) on the current governmental structure of the schools.

EA 006 861

Johnson, Donald V. "Student Disciplinary Codes–What Makes Them Tick." Paper presented at National Association of Secondary School Principals annual conference, Dallas, February 1973. 8 pages. ED 078 579.

Johnson outlines the evolution of the disciplinary code in his high school, offering some valuable pointers to other school administrators involved in developing such a code. Princeton High School's first statement on student rights and responsibilities proved to be too general. It did not present rules explicitly enough, and it did not adequately spell out "actions which would be taken in response to violations." As a result of this initial failure, a second, more specific code was developed allowing for inschool suspension, a "special alternative out-of-school program" for chronic-discipline cases, and an evening program of high school credit courses for dropouts.

Johnson lists four necessary steps in the development of a workable student discipline code. First, the code must incorporate input from the whole community, as well as from the students themselves. Second, the school should follow the advice of "an enlightened legal authority" in writing the code. Third, the code may be developed through "a series of working drafts" to ensure that all areas are adequately covered. And finally, parents, as well as students, should be thoroughly acquainted with the intent and provisions of the code.

Johnson's paper offers specific and down-to-earth suggestions that can be of assistance to school administrators attempting to develop a workable disciplinary code.

Order from EDRS. MF $0.75 HC $1.50. Specify ED number.

Kleeman, Richard P. *Student Rights and Responsibilities. Courts Force Schools To Change An Education U.S.A. Special Report.* Washington, D.C. National School Public Relations Association, 1972. 67 pages. ED 071 171.

This "overview" covers the major subtopics of student rights, noting the increasing importance of the courts in defining and asserting students' constitutional rights. The author of this report maintains that student participation in school governance may also be considered a component of student rights, since democracy demands the consent of the governed and students are "participants," not "recipients" of education.

The report includes a survey of state and local school "authorities" on the degree and kind of student participation in defining student rights. Although less than half of the states have adopted formal statements on student rights and responsibilities, many reported that their students are concerned with "civil liberties" and student participation in policy making.

Although its analysis of some areas has been outdated by recent legislative action and court rulings, this report still offers a valuable review of the whole topic of student rights.

Order MF from EDRS, $0.75. Specify ED number. HC not available.

Ladd, Edward T. "Regulating Student Behavior Without Ending Up in Court." *Phi Delta Kappan*, 54, 5 (January 1973), pp. 304-309. EJ 069 809.

In this excellent summary of two opposing strains of American political philosophy, Ladd analyzes the current friction between student rights advocates and school authority advocates. On the one hand, the school authority structure derives from the Puritan concept of rigid control of the people by those endowed with "a higher authority." On the other hand,

the Madisonian concept of individual rights taking precedence over autocratic control stipulates that authority comes not from above, but from "the members of the community." Ladd points out that "the kind of social environment provided by the Madisonian system is inescapably much more educational than the kind the Puritan system provides."

For the school administrator, the implications of the emergence of Madisonian theory are truly great, according to Ladd. To soften the impact of increasing demands for student rights, both from students themselves and from the courts, the schools should develop workable, written statements of students' rights and responsibilities. He notes that efforts to meet these demands should be made by everyone concerned with education, not just by administrators alone.

Nolte, M. Chester. "Due Process for Students, Teachers and Administrators in Suburban School Districts." Paper presented at American Association of School Administrators National Conference for Suburban Superintendents, Denver, July 1973. 21 pages. ED 081 102.

Nolte's paper offers a valuable summary of the sources and the intent of due process. Pointing out that "due process of law" is guaranteed twice in the Constitution (in the Fifth and Fourteenth Amendments), he notes that its basic purpose is to ensure "*fairness* between the individual and the state."

Due-process procedure has not been strictly defined by the courts in order to allow for variations in individual cases. But, as Nolte states, "perhaps the essence of due process" is the rule that all persons be informed of what the state permits and forbids. Due process also "requires some type of hearing, and that this hearing must occur before state action is taken."

Although Nolte also considers due process for teachers and administrators, he deals with its role in student discipline and freedom of expression, outlining the major court decisions defining students' rights in these areas. He points out that in discipline cases involving other law officials (especially the police), the school administrator would do well to remain within his role as "child advocate–rather than taking up the role of the police prosecutor." It is the duty of the administrator, according to Nolte, to guarantee due-process protection for his students, both inside and outside the school.

Order from EDRS. MF $0.75 HC $1.50. Specify ED number.

Nolte, M. Chester. "The Supreme Court's New Rules for Due Process and How (Somehow) Schools Must Make Them Work." *The American School Board Journal*, 162, 3 (March 1975), pp. 47-49.

Nolte reviews (and critiques) the recent Supreme Court decision requiring "minimum due process" for students temporarily suspended (for ten days or less). In this case, *Goss v. Lopez*, the Court ruled that the suspended student must be notified as to the reasons why he was suspended, and he must be given "an opportunity to present his side of the story," as Nolte states. But the Court stopped short of granting "the full panoply of due process guarantees."

One of the major difficulties that Nolte sees in this ruling, which he regards as somewhat ambiguous, is that the process outlined by the Court differs very little from the process already followed by most "good school administrators." As he states, "The limits of due process are hardly more clear than they were before" the ruling. The "vagueness, disjointedness and seeming contradictions" of the Court's decision ensure that the "problem" of due process for students has not yet been "put to rest."

Nolte's analysis of this decision is one of the most thorough to be published so far, though it could be more clearly written.

Olfson, Lewy. "Today's Mandate: Policies That Fling Open the Doors of Learning to Handicapped Pupils." *Updating School Board Policies*, 5, 5 (May 1974), pp. 1-4. EJ 099 436.

Two court decisions affecting the relationship between the public schools and handicapped children underline the necessity of an equitable school policy accommodating the needs of *all* children (not just the "normal" ones), according to Olfson. In *Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania* (1971) and in *Mills v. Board of Education of the District of Columbia* (1972), "the courts confirmed that all children, regardless of handicap, are entitled to a regular public school education or to adequate alternate educational services suited to their needs," as Olfson states. He points out that the courts' reasoning in these two cases is in direct line with the *Brown v. Board of Education* (1954) decision in which the Supreme Court held that education "may not be denied to any child for any reason."

Olfson notes that some school boards have "wished to give the appearance of being willing to offer special education—without having to actually do it." Pointing out that in the *Mills* case, the court eliminated lack of finances as a reason for not providing equal educational opportunity for handicapped children, he advises that school boards immediately begin plans to integrate exceptional children into the public schools.

Olfson's article is an easy-to-read summary of an area of student rights that until very recently has received little attention in the literature.

Pepe, Thomas J. "Student Rights: Winds of Change." *NOLPE School Law Journal*, 3, 2 (Fall 1973), pp. 17-22. EJ 102 542.

Although Pepe's article is too general to be of value as a factual resource, the author's point of view is worth noting. Pepe is a superintendent of schools and, unlike some of his colleagues in school government, he embraces the emergence of student rights (and especially due-process rights) as a viable means of strengthening education.

Noting that "due process is long overdue" for students, he points out that the schools, perhaps more than any other institution in society, have a "vested interest in observing . . . the rights of human beings as outlined in the Constitution." American schools, according to Pepe, are "the 'workshops of democracy,' " the institutions charged with instilling a respect for human rights and the law in their students. Guaranteeing those students equal and fair treatment under the law would help to achieve this goal.

Pepe seems to lack the latent animosity toward the emergence of student rights evinced by some authors in this controversial area. His brief article offers a nice balance to the literature.

Reitman, Alan; Follmann, Judith; and Ladd, Edward T. *Corporal Punishment in the Public Schools. The Use of Force in Controlling Student Behavior. ACLU Reports.* 1972. 43 pages. ED 066 813.

"The use of physical violence on school children is an affront to democratic values and a constitutional infringement of individual rights," according to this comprehensive report on corporal punishment in the schools. The most striking section of this survey of the effectiveness, legality, and prevalence of physical punishment in public schools is the one summarizing case reports. These examples of excessive physical abuse of students by teachers and administrators alike leave little doubt that corporal punishment as a disciplinary means is far too frequently misused.

State statutes and court decisions governing the use of corporal punishment in the schools are also reviewed in this report. Its authors note that the law in part reflects the willingness of the public to support such punishment from a "concern over 'law and order.' " But they also note that such punishment is an invasion of students' constitutional rights including those of freedom from cruel and unusual punishment, access to due process, and equal protection under the law.

Order copies from American Civil Liberties Union, 22 East 40th Street, New York, New York 10016. $1.00.
Also available from EDRS. MF $0.75 HC $1.85. Specify ED number.

HOW TO ORDER ERIC REPORTS

Copies of most ERIC reports, but not journal articles, can be ordered from the ERIC Document Reproduction Service. If a report is available from EDRS, its order number and prices are given. When ordering, please specify the "ED" number. Unless otherwise noted, reports are available in both microfiche (MF) and Xerox copy (HC). All orders must be in writing, and payment must accompany orders of less than $10.

Postage must be added to the cost of all orders. Weights for determining the amount of postage are as follows: 96 pages = 1 microfiche, 35 microfiche = 1 pound, and 100 hard copy pages = 1 pound. Book rate costs $0.18 for first pound, $0.08 per additional ½ pound or part thereof. First class or air mail postage is available at additional cost.

Address requests to ERIC Document Reproduction Service, Computer Microfilm International Corporation, P. O. Box 190, Arlington, Virginia 22210.

Reutter, E. Edmund, Jr. *The Courts and Student Conduct. ERIC/CEM State-of-the-Knowledge Series, Number Twenty-seven. NOLPE Monograph Series.* 1975. 104 pages. ED number not yet assigned.

The Educational Resources Information Center (ERIC) is a national information system operated by the National Institute of Education. ERIC serves educators by disseminating research results and other resource information that can be used in developing more effective educational programs. The ERIC Clearinghouse on Educational Management, one of several such units in the system, was established at the University of Oregon in 196 . The Clearinghouse and its companion units process research reports and journal articles for announcement in ERIC's index and abstract bulletins.

Research reports are announced in Resources in Education (RIE), available in many libraries and by subscription for $42.70 a year from the United States Government Printing Office, Washington, D.C. 20402. Journal articles are announced in Current Index to Journals in Education. CIJE is also available in many libraries and can be ordered for $50 a year from Macmillan Information, 216R Brown Street, Riverside, New Jersey 08075.

Besides processing documents and journal articles, the Clearinghouse prepares bibliographies, literature reviews, monographs, and other interpretive research studies on topics in its educational area.

This publication was prepared pursuant to a contract with the National Institute of Education, U.S. Department of Health, Education, and Welfare. Contractors undertaking such projects under government sponsorship are encouraged to express freely their judgment in professional and technical matters. Prior to publication, the manuscript was submitted to the Association of California School Administrators for critical review and determination of professional competence. This publication has met such standards. Points of view or opinions, however, do not necessarily represent the official view or opinions of either the Association of California School Administrators or the National Institute of Education.

EA 006 861

This concise summary of pertinent judicial decisions outlines the major aspects of the student's legal relationship to the school. Reutter's monograph is a revised and expanded version of his 1970 paper on the legal aspects of student control.

Summarizing the changes in the "legal framework" for student discipline, he notes the movement away from strict court enforcement of the doctrine of *in loco parentis*. Although the courts are governed by "the principle of noninterference," they become involved in student conduct matters when the issues involve "fundamental" rights—those "explicitly or implicitly guaranteed by the Constitution." In such cases, the "burden of proof" is placed on the defendants—the school authorities.

Reutter deals specifically with court cases related to student use of insignia and emblems, student publications, dress and appearance, the formation of secret societies, and student marriage and parenthood. Although not nearly as extensive as Goldstein's compendium of cases and relevant materials, Reutter's monograph offers an efficiently organized summary in relatively easy-to-read language.

Order copies from National Organization on Legal Problems in Education, 825 Western Avenue, Topeka, Kansas 66606. $4.95.

Also available from EDRS. MF $0.75 HC $5.40. Specify ED number.

Shannon, Thomas A. "The New Tactics Used by Plaintiffs in Imposing Their Views on, or Enforcing Their Rights Against, Public School Boards—A Commentary." *Journal of Law and Education*, 2, 1 (January 1973), pp. 77-87. EJ 073 122.

Shannon outlines reasons behind the current trend toward use of civil litigation to create new law. As the title of his article suggests, the author is somewhat biased against the increasing awareness on the part of parents and students alike that the courts are more responsive to educational issues than they have been in the past.

The "new tactics" employed by plaintiffs in civil suits against the schools include requests for both general and punitive damages against the school defendants, as well as for attorneys' fees, since, as Shannon notes, "litigation is expensive." Plaintiffs also attempt to place their case before the public, either through press conferences, or through political pressure brought to bear on the school board. The intent is to get the defendant to "capitulate in the lawsuit or to decide not to appeal from a trial court decision favorable to the plaintiffs." Plaintiffs may "attempt to induce" the court to oversee the implementation of its ruling, thus threatening "the control of education by state legislatures and state and local boards of education." The "vigorous and tenacious" legal advocacy practiced by legal aid organizations, on behalf of both minority groups and school employees, is, according to Shannon, yet another "tactic" designed to benefit plaintiffs in legal contests against school officials. Finally, "threats of lawsuit" are viewed by Shannon as inhibiting forces restricting "the reasonable performance of the school officials' responsibilities."

Although Shannon's tone seems rather paranoid, his summary of changes in civil litigation involving schools is valuable.

Templeton, Ian. *Student Rights and Responsibilities. Educational Management Review Series Number 14.* 1973. 10 pages. ED 073 517.

In this brief review of the literature, Templeton includes most of the major sources on student rights written in the early 1970s. Dealing primarily with those publications analyzing court decisions, he also includes material on student codes and written policies of rights and responsibilities, as well as administrator rights and responsibilities.

A list of periodicals devoted to school law or regularly including articles on this topic is included, along with a 27-item bibliography.

While the supply lasts, free copies are available from ERIC Clearinghouse on Educational Management, University of Oregon, Eugene, Oregon 97403.

Also available from EDRS. MF $0.75 HC $1.50. Specify ED number.

GPO 993-178

$5